



APPENDIX**PROTECTION OF HOLDERS OF GUARANTEED MORTGAGES
(SCHACKNO ACT)****Laws 1933, c. 745.**

Renumbered 1942 as Sections 4871-4881 incl. of the
Unconsolidated Laws.

AN ACT to provide for the protection of holders of mortgage investments guaranteed by title and mortgage guarantee corporations and investment companies.
(L. 1933, c. 745, as amended by L. 1933, c. 780; L. 1934, c. 92; L. 1934, c. 906; L. 1934, c. 909; L. 1934, c. 919; L. 1935, c. 588, in effect April 27, 1935.)

§ 1796. LEGISLATIVE DECLARATION OF FACT AND POLICY

§ 1. The legislature hereby declares the existence of a public emergency affecting the health, safety, and comfort of the people requiring the provisions of this act, arising out of the following circumstances. Approximately one billion of dollars in principal amount of real estate mortgage investments, sold, issued, distributed or guaranteed, directly or indirectly, by title and mortgage guaranty corporations or investment companies organized and now existing under the insurance law or banking law, respectively, are now outstanding; and such mortgage investments are widely held by hundreds of thousands of investors, a large percentage of whom are persons of only moderate means. As a result of the existing disruption of economic and financial processes, rental values have declined so sharply that it is impossible in many cases for owners of real estate to meet their obligations on the bonds, mortgages or other security against which mortgage investments have been issued guaranteed by such guaranty corporations, directly or indirectly. Numerous defaults aggregating millions of

dollars have occurred in the payment of interest and principal on such mortgage investments and on the bonds, mortgages and other security against which such mortgage investments have been issued; and widespread additional defaults are likely to occur therein. Under existing conditions any immediate liquidation of any substantial amount of such bonds, mortgages or other security in respect to which such defaults exist, or the attempt to do so, would so demoralize the general real estate market that there might be realized on such bonds, mortgages or other security substantially less than the face amount thereof and substantially less than would be realized if they were disposed of in an orderly manner over a reasonable period of time. Since the guaranty corporations are obligated to pay the amount of the deficiencies resulting from the liquidation of such bonds, mortgages or other security at less than the face amount thereof, the forced liquidation of the bonds, mortgages or other security would result in such unprecedented demands upon the resources of the guaranty corporations that their resources would be sufficient only to pay a relatively small portion of such demands. The guaranty corporations are not amenable to the federal bankruptcy law; and the holders of mortgage investments cannot avail themselves of the composition provisions of such bankruptcy laws for the settlement of their claims against such corporations in respect of guarantees undertaken by such corporations. The guaranty corporations are subject to control and regulation by the state and to the supervision of the superintendent of insurance or of the superintendent of banks.

It is therefore hereby declared to be essential for the public interest to provide a procedure under which such bonds, mortgages or other security may be liquidated in an orderly manner and under which the assets of the guaranty corporations may be administered and conserved equally and ratably in the interests of holders of mortgage investments.

§ 1797. APPLICATION OF ACT; DEFINITIONS

§ 2. This act shall apply to any title and mortgage guaranty corporation organized and now existing under the insurance law or to any investment company organized and now existing under the banking law, which shall have sold mortgage investments as hereinafter defined.

"Guaranty corporations" as used in this act shall include such title and mortgage guaranty corporations and investment companies.

"Superintendent" as used in this act shall mean the superintendent of insurance or the superintendent of banks having supervisory or regulatory powers under existing law over such title and mortgage guaranty corporations or investment companies as the case may be.

"Mortgage investments" as used in this act shall include all interests in bonds, notes and other evidences of indebtedness of individuals, partnerships, associations or corporations, secured by mortgage or mortgages upon, or deed or deeds of trust or similar evidences of an interest in, real property, situated in this state or outside of this state, guaranteed by a guaranty corporation, and all collateral trust bonds or notes of a guaranty corporation which are secured by pledge or assignment of any such interests; but shall not include any such bond, note or other evidence of indebtedness when the same shall be held entirely by only one person, firm or corporation or any such collateral trust obligations when all of them having the same security are held entirely by only one person, firm or corporation.

The words "functions of any guaranty corporation" shall include any or all of the duties, rights, functions, remedies and powers conferred with respect to any mortgage investments upon any guaranty corporation, directly or indirectly, by virtue of any statute, agreement or otherwise. (As amended by L. 1933, c. 780; L. 1936, c. 491, § 1, in effect May 9, 1936.)

§ 1798. POWERS OF SUPERINTENDENT

§ 3. The superintendent may, himself or by his duly authorized agent, take over, administer, exercise, conduct, execute and manage, or he may restrict, limit, govern, control, direct and regulate, any or all of the functions of any guaranty corporation with respect to any mortgage investment sold or guaranteed by such guaranty corporation, whenever in his opinion such action is necessary or advisable for the protection of such guaranty corporation or of the holders of such mortgage investment, in the event (1) that such guaranty company has been taken over by the superintendent for rehabilitation or liquidation, or (2) that there is a default under such mortgage investment, or under any bond, mortgage or other security against which such mortgage investment has been issued.

§ 1799. COLLECTION AND DISPOSITION OF MORTGAGE MONEYS

§ 4. The superintendent shall be authorized with respect to any bonds, mortgages or other security held by such guaranty corporation or otherwise, against which any mortgage investments have been issued, to do by himself or by his authorized agent, any of the following:

(a) To receive, collect and sue for the interest and principal of the bonds, mortgages and other security held by such guaranty corporation or otherwise, or to bring any foreclosure action on the same and take title to the property sold under such action in such name or names as he may determine;

(b) To deduct from any sum so obtained a reasonable amount to cover the costs and expenses of any such collection, suit, or foreclosure action, or any other functions performed by him pursuant to this act;

(c) To distribute the balance of such sums so collected to the holders of such mortgage investments or, at the election of the superintendent, (1) to withhold, for such time

as he deems expedient or desirable, all or any part thereof from distribution, or, (2) in his discretion, to apply all or any part thereof for any purpose whatsoever which he deems advisable or necessary for the protection of the interests of the holders of such mortgage investments.

§ 1800. APPOINTMENT OF AGENT

§ 5. Where pursuant to the provisions of section three or four of this act the superintendent is authorized to appoint an agent to perform any of his duties or functions therein provided for, he may appoint as such agent the guaranty corporation involved in such default or any officer thereof, or any other person or corporation.

§ 1801. REORGANIZATION

§ 6. (1) When the superintendent shall have exercised any of the powers granted to him under section three or four of this act, he or the holders of fifteen per centum in principal amount of such mortgage investments (exclusive of any part thereof held by the guaranty corporation which sold such mortgage investments), or a corporation organized under article twelve of the insurance law, as added by chapter four hundred fifty-three of the laws of nineteen hundred thirty-three, may promulgate a plan or agreement for the readjustment, modification, or reorganization of the rights of all of the holders of such mortgage investments, and the modification, readjustment or liquidation of the bonds, mortgages or other security against which such mortgage investments have been issued. Such plan or agreement shall be deemed to have been duly promulgated when the signatures of the required number of holders of such mortgage investments or their agents duly authorized shall appear on such plan or agreement or upon a written consent setting forth the substance of such plan or agreement. Such signatures may appear on any one copy of the plan, agreement or consent or may appear upon counter-

parts or separate consents if the aggregate signatures shall represent the required number. The name of the promulgators shall appear on the copy or summary to be submitted to the holders of such mortgage investments as herein provided. The superintendent shall thereupon obtain from such guaranty corporation a list of the holders of such mortgage investments. He shall thereupon submit such plan or agreement to all of the holders of such mortgage investments on such list by mailing a copy thereof (or a summary thereof prepared by him) to each such holder or to his duly authorized representative addressed to him, postage prepaid, to the address provided in such list, or if no such address be so provided, then to his last known address. He shall also mail such copy or summary to each other person or corporation known to the superintendent to have an interest which may be affected by the proposed plan or agreement. A copy of the plan or agreement shall be kept by the superintendent at an office of such superintendent available for public inspection, and he shall take such other steps as he may deem necessary for making the plan or agreement and all notices and facts in connection therewith available to all interested parties. (As amended by L. 1934, c. 919, in effect September 7, 1934.)

1-a. Any holder of a mortgage investment who desires in good faith to promulgate a plan or agreement of reorganization as provided in the preceding subdivision may, upon notice to the superintendent and the appropriate guaranty corporation, apply to the court, which, if satisfied as to the good faith of the applicant, shall order such guaranty corporation to furnish to such applicant a list of the holders of the mortgage investments who would be affected by such plan; but such list shall be retained by such applicant for the purpose specified and shall not otherwise be disclosed or published. (As added by L. 1934, c. 906, in effect August 31, 1934.)

(2) The superintendent shall prepare and mail to each such holder and each such other party, either with a copy of such plan or agreement or summary, or at any time subsequent thereto, a notice stating in substance that such plan will be presented to the court as hereinafter provided ^{and}, and designating a date, which date shall not be less than twenty days after the mailing of such notice, when such court will pass upon such plan or agreement and hear any objection thereto on the part of any holder of such mortgage investments or such other party as may have an interest therein.

Upon the return date of such notice, the superintendent shall indicate to the court whether or not he approves or disapproves such plan or agreement. The court shall hear the parties interested therein and, if it deem it necessary, may take testimony relative thereto and/or may take proof in affidavit form or through a referee appointed for the purpose as to any fact or circumstance material thereto. If a referee be appointed, he shall make and file a report with the court with all convenient speed. The costs of such reference shall be borne by such of the parties in such amounts as the court shall direct. The court shall thereupon approve, modify or disapprove such plan or agreement. No such plan or agreement shall become operative unless and until it shall have been approved, in its original or in a modified form by such court, and unless and until the holders of two-thirds in principal amount of such mortgage investments (exclusive of any part thereof held by the guaranty corporation which sold or guaranteed such mortgage investments) or their agent duly authorized, shall have consented to such plan or agreement. (As amended by L. 1935, c. 588, § 1, in effect April 27, 1935.)

(3) When any such plan or agreement shall have been so approved by the court and by such two-thirds in principal amount or their agent duly authorized therefor, such plan or agreement shall be binding upon all the holders of such mortgage investment and the guaranty corporation which

shall have sold or guaranteed the same; and all the holders of such mortgage investment shall be conclusively deemed to have consented to all of the terms and conditions of such plan or agreement whether or not all of such holders shall actually have consented and whether or not all of them shall have received notice of such plan or agreement or of such hearing as hereinbefore provided. Thereupon such steps shall be taken by the superintendent and all other parties, and all acts shall be done as may be required by such plan or agreement so approved and as may be necessary or desirable for the consummation of such plan or agreement.

(4) The expenses of the printing and mailing of such plan or agreement or the summary thereof shall be paid as follows: If the plan promulgated be the plan of the superintendent, he shall pay therefor out of any funds which may have come or may come into his possession out of such property. If the plan promulgated be that of the holders of fifteen per centum of such mortgage investments as provided for in this section or if the plan be that of a corporation organized under article twelve of the insurance law, as added by chapter four hundred fifty-three of the laws of nineteen hundred thirty-three then such holders or such corporation shall deposit with the superintendent in advance a sufficient sum of money to pay such expenses, which shall be used by the superintendent for such purposes. If such plan so promulgated by such holders or such corporation become operative as herein provided the superintendent shall repay to the holders or corporation making such deposit the expenses of such printing and mailing out of any funds which may have come or may come into his possession out of such property. (As amended by L. 1934, c. 919, in effect September 7, 1934.)

§ 1802. LIABILITIES NOT DISCHARGED

§ 7. The liability of any guaranty corporation with respect to any mortgage investments sold, issued, distributed

or guaranteed directly or indirectly by it shall not be discharged by any action taken pursuant to this act, except as otherwise expressly provided in any plan or agreement promulgated and approved as herein provided.

§ 1803. POWERS OF FIDUCIARIES

§ 7-a. An executor, administrator, trustee, guardian, committee of an incompetent, or other person, including any official of the state or any political subdivision thereof, holding trust funds, who has lawfully invested any trust funds in mortgage investments may join in promulgating and/or may consent to a plan or agreement for the readjustment, modification, or reorganization of the rights of all the holders of such mortgage investments, and the modification, readjustment or liquidation of the bonds, mortgages or other security against which such mortgage investments have been issued; and after the entry of an order pursuant to this chapter approving or modifying such plan or agreement and providing that such plan or agreement is binding upon all the holders of such mortgage investments and the guaranty corporation which shall have sold or guaranteed them and all of the parties interested therein, then such executor, administrator, trustee, guardian, committee of an incompetent, or other person, may execute such instruments and do such acts as may be required by such plan or agreement so approved and as may be necessary or desirable for the consummation of such plan or agreement so approved, and may accept in exchange for such mortgage investments, and hold the same as legal investments, any securities or obligations, secured or unsecured, issued by a corporation organized pursuant to the order of the supreme court approving or modifying such plan or agreement, irrespective of whether or not such corporation acquires the bonds, mortgages, or other security against which such mortgage investments have been issued; and for the execution of such instruments, doing of such acts and/or the

acceptance of such securities or obligations, such executor, administrator, trustee, guardian, committee of an incompetent or other person shall not be subject to any liability whatsoever. (As added by L. 1934, c. 92, in effect March 24, 1934.)

§ 1804. JURISDICTION OF SUPREME COURT

§ 8. The supreme court of the county in which any such guaranty corporation has or had its principal office is hereby vested with jurisdiction and authority to determine the fairness of any plan or agreement which may be promulgated hereunder with respect to any mortgage investments sold or guaranteed by such guaranty corporation and to approve, modify or disapprove the same, provided, however, that where the underlying security or securities, property or properties affected by such proposal or plan is or are located within one county, then the supreme court held in such county shall have such jurisdiction. If a referee be appointed he shall report his determination for confirmation or modification upon such notice as the court shall direct. Such court shall make an order approving, modifying or disapproving such plan or agreement. In the event that the court shall have approved or modified such plan or agreement; and if at the time of the entry of such order the court shall have been satisfied that sixty-six and two-thirds per centum of the holders in principal amount of such mortgage investment or their duly authorized agent have approved such plan or agreement, such order shall recite such fact, and shall thereupon be binding upon all the holders of such mortgage investments and the guaranty corporation which shall have sold or guaranteed them and all of the parties interested therein. If at the time of making such order such percentage of the holders of such mortgage investment shall not have approved of the same, such order shall provide that upon satisfactory proof of the fact that sixty-six and two-thirds per centum of the holders in principal amount of such mortgage investments shall have

approved the same, a further order may be entered ex parte approving such plan or agreement, which further order shall be binding upon all the holders of such mortgage investments and upon the guaranty corporation which shall have sold or guaranteed the same and upon all other parties interested therein. (As amended by L. 1935, c. 588, § 2, in effect April 27, 1935.)

§ 1805. EFFECT OF UNCONSTITUTIONALITY OF PART OF THIS ACT

§ 8. If any provision of this act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of the act and the applicability of such provision to other persons and circumstances shall not be affected thereby.

§ 1806. TIME OF TAKING EFFECT

§ 9. This act shall take effect immediately.

§ 1807. CONTINUANCE AND DURATION OF EMERGENCY

§ 9-a. The legislature hereby declares that the emergency declared by section one of this act still continues and that it may reasonably be expected to continue to and including the first day of January, nineteen hundred and forty; and the provisions of this act shall remain in force and effect to and including that day, but not longer unless otherwise hereafter provided by law. However, the termination of such period shall not impair or render ineffective any plan or agreement which becomes operative or impair any obligation which is incurred or right created before the termination of such period. (As added by L. 1934, c. 909, and amended by L. 1935, c. 588, in effect April 27, 1935.)